

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

DOCKET NO.

77-1096

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

LAMONT B. DAY,

Defendant-Appellant.

On Appeal from the United States District
Court for the Eastern District of New York

BRIEF FOR APPELLANT

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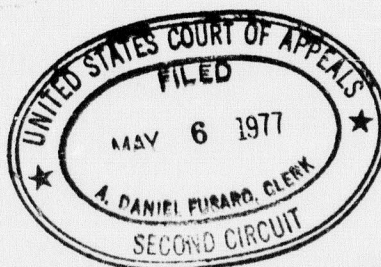


TABLE OF CONTENTS

	<u>Page</u>
Table of Cases and Authorities	i
Preliminary Statement	1
Statement of the Case	3
Issue Presented for Review	9
ARGUMENT	11
THE GOVERNMENT FAILED TO PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT, AND THE DENIAL OF DEFENDANT'S MOTION TO DISMISS WAS REVERSIBLE ERROR AS A MATTER OF LAW	11
CONCLUSION	19

TABLE OF CASES AND AUTHORITIES

C A S E S

	<u>Page</u>
<u>In re Winship</u> , 397 U.S. 358 (1970)	12, 17
<u>Speiser v. Randall</u> , 357 U.S. 513 (1958).....	12
<u>Wilson v. United States</u> , 232 U.S. 563 (1914).....	12
<u>Miles v. United States</u> , 103 U.S. 304 (1881).....	12
<u>United States v. Hart</u> , 407 F.2d 1087 (2d Cir. 1969)	12
<u>United States v. Bilotti</u> , 380 F.2d 649 (2d Cir.), <u>cert. denied</u> , 389 U.S. 944 (1967)...	12
<u>Holland v. United States</u> , 348 U.S. 121 (1954).....	12
<u>United States v. Tramunti</u> , 500 F.2d 1334 (2d Cir.), <u>cert. denied</u> , 419 U.S. 1079 (1974)..	16
<u>United States v. Brooks</u> , 349 F. Supp. 168 (S.D.N.Y. 1972).....	17
<u>United States v. Feinberg</u> , 140 F.2d 592 (2d Cir. 1944).....	17
<u>United States v. Harris</u> , 409 F.2d 77 (4th Cir.), <u>cert. denied sub nom</u> <u>Brown v. United States</u> , 396 U.S. 97 (1969).....	17

	<u>Page</u>
<u>United States v. Wapnick</u> , 202 F. Supp. 712 (E.D.N.Y. 1962).....	17
<u>United States v. Gardner</u> , 171 F.2d 753 (7th Cir. 1948).....	17

S T A T U T E S

Fed. R. Crim. P. 29	11
18 U.S.C. § 1708	2, 12
18 U.S.C. §§ 1341 and 1342	2, 14

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 77-1096

UNITED STATES OF AMERICA,
Appellee,
- a g a i n s t -
LAMONT B. DAY,
Appellant.

BRIEF FOR APPELLANT
LAMONT B. DAY

The Reverend Lamont B. Day appeals from a judgment of conviction entered on January 14, 1977, in the United States District Court for the Eastern District of New York, following a two-day trial before The Hon. Thomas C. Platt, United States District Judge, and a jury.

The indictment in this case charged Day with one count (Count One) of conspiring with Annie L. Presswood, Woodrow Presswood and Claudie Grayson, Jr. to illegally remove three Treasury checks from the mails in violation of

18 U.S.C. § 1708. The indictment also charged Day with one count (Count Eight) of using the mails to convert these checks into money in violation of 18 U.S.C. §§ 1341 and 1342.

Judge Platt sentenced Day, who had no prior record, to a four-year term of imprisonment on Count One, and to a concurrent four-year term of imprisonment on Count Eight. Judge Platt also ordered Day to pay a fine of \$2,000 on Count One and \$2,000 on Count Eight. The sentence was imposed on January 24, 1977. Day is presently free on bail of \$25,000 pending this appeal.

Statement of the Case

Facts Relevant to Guilt or Innocence

At the time of the trial, appellant, Reverend Lamont B. Day, was the spiritual leader of the Psycho-physical Temple in Brooklyn, which has twenty-three other affiliated churches located in New York City and scattered through the Southern and Eastern regions of the United States, as well as the Virgin Islands (Tr. 153-54, 220).*

The following is a summary of the testimony concerning the crimes charged.

Claudie Grayson had been employed as a letter carrier by the United States Postal Service for nearly seven years (Tr. 19-20). In mid-1975, while he was employed as a letter carrier, Grayson was introduced to Woodrow Presswood and Ann Presswood. During that introductory session, Grayson and Woodrow Presswood made arrangements concerning stealing checks from the mail (Tr. 20-21).

* The prefix "Tr." denotes citations to the record. The prefix "App." denotes a reference to the appendix. If a reference is made either to a portion of the court's charge to the jury or to a portion of the record reproduced in the appendix, both record and appendix page numbers will be provided.

The arrangements regarding the stolen checks were that Grayson, in his capacity as a letter carrier, would remove from mail checks which were returned because the addressee was deceased, turn these checks over to Woodrow Presswood and Presswood would then arrange to convert the checks into cash. According to Grayson, Presswood was to send the checks to Youngstown, Ohio to be deposited in the account of a "Preacher, or Reverend" who was known to Presswood (Tr. 21-23).

Grayson passed stolen checks to Presswood between January and April of 1976 (Tr. 24-26). Grayson testified that, during the period in which the stolen check scheme occurred, he never met or saw this "Preacher, or Reverend." Grayson pleaded guilty to one count of obstructing the mails after agreeing to cooperate with the Government by testifying against Reverend Day (Tr. 19).

Woodrow Presswood, who also pleaded guilty to and agreed to cooperate with the prosecution, testified that he first met the Reverend Day in 1965 or 1966, when he consulted Reverend Day seeking counseling concerning marital difficulties he (Presswood) was encountering (Tr. 35-36). Presswood also knew Reverend Day's wife during

this period and there were some strong words between Woodrow Presswood and the defendant, Reverend Day, over an affair between Presswood and Reverend Day's wife, in 1969 (Tr. 158-159).

Reverend Day testified that, at the time he first met Presswood, he was working as a youth advisor for the County of Nassau and the State of New York. Woodrow Presswood came to him for counseling and advice. On several occasions, the Reverend Day came home to find Presswood upstairs in the living quarters with Mrs. Day, and not in the Reverend's "business area." The Reverend Day and Presswood had words over the incidents. Reverend Day testified that he subsequently discovered that Woodrow Presswood was involved with illegal heroin and he turned Presswood into the New York police. Presswood admitted, while testifying at this trial, that he had been previously convicted for illegal drug use (Tr. 60-61, 158-160). The relationship between Presswood and Reverend Day terminated shortly thereafter, only to be revived again in 1976 (Tr. 40).

In March of 1976, Reverend Day was holding "consultation" sessions at the home of Mrs. Wilbur Newman in Brooklyn. Woodrow Presswood came to Mrs. Newman's home for consultation with the Reverend Day. This occurred on March

15 or 16, 1976. Mrs. Newman testified that she was present during this session, which lasted approximately one-half hour, and that the talk was basically about "old times." Revrend Day's testimony concurs with this account (Tr. 42-43, 244, 160-161).

Woodrow Presswood's testimony is at variance with both Mrs. Newman and the Reverend Day as to what transpired on March 15 or 16, 1976. According to Presswood, his wife Ann told him that she had been consulting with a minister named Reverend Day. Presswood testified that, thereafter, he went to visit Reverend Day and, according to Presswood, he and the Reverend discussed and planned the obtaining of phony identification cards for Presswood and the alleged stolen check scheme (Tr. 41-46, 55-60).

Presswood testified that, after a short while, he left Mrs. Newman's home and returned with the stolen checks. He claimed that he showed these checks to the Reverend Day, who told him that the checks should be deposited in a bank account in Ohio. Presswood said that he had to leave Mrs. Newman's place to get his wife to come and write down the address of the bank holding the Ohio account, supposedly because Presswood himself could not read or write. Presswood stated that his wife did go

to the Reverend Day, got the address and mailed the checks (Tr. 43-46).

Annie Presswood, who also pleaded guilty and agreed to testify against Reverend Day, testified that in early 1976 she went to see Reverend Day for marriage counseling, consistent with Reverend Day's testimony (Tr. 67). She testified that, after she learned of her husband's involvement in the stolen check scheme with Claudie Grayson, her husband asked her to go see Reverend Day for him. She testified that she went to see Reverend Day who gave her the address of an Ohio bank account and instructions as to how to deposit Woodrow Presswood's stolen checks in that account. Ann Presswood said that she got involved with her husband's check schemes because she was fearful of him (Tr. 70-80, 90-91).

Ann Presswood further testified that, subsequent to sending checks to the Ohio account, she had several phone conversations with Reverend Day. These conversations apparently concerned some difficulties arising from the checks. She said that Reverend Day told her that the bank was not crediting the account as the checks arrived and that his mail was being held up (Tr. 77-83).

Reverend Lamont B. Day, testifying in his own behalf, told the court how he and his church accept dona-

tions. He tells parishioners that they may make donations to the church by sending cash or checks to the church's account at the Union National Bank in Youngstown, Ohio (Tr. 154-156). The Reverend Anthony Mustafa has complete control over this account at the Youngstown Bank. Reverend Day has never had any authority over that account (Tr. 155).

While acknowledging having counseled both Woodrow and Ann Presswood, Reverend Day denied ever having discussed stolen checks with them or having participated in any stolen check scheme (Tr. 157). Reverend Day testified that, after having counseled Ann Presswood in March 1976, as was his custom, he wrote down the address of the church's account in the hope that she might wish to make a donation.

On March 29 or 30, Reverend Day received a telephone call, while he was in Youngstown, Ohio, from Mrs. Presswood (Tr. 185-186). Mrs. Presswood wanted to know whether he had received her donation. This was the first time he was aware that she was making a donation. At around the same period of time, Mr. Anthony Mustafa, who had control of the church's account, told Reverend Day that some bad checks had been improperly placed in the account (Tr. 202).

Subsequently, on April 13, 1976, Reverend Day, while in the Union National Bank in Youngstown, Ohio, was informed by a bank officer that some difficulties had arisen concerning the church's account there (Tr. 199). The bank officer verified that bad checks had been placed in the account (Tr. 199-200).

A postal inspector in Youngstown, Ohio, testified that Reverend Day came to him sometime in April complaining of undesirable mail being sent to Reverend Day and his church. The inspector stated that Day told him that he had received information from the Union National Bank that some of the checks being sent to Mr. Mustafa's account were for deceased payees. Reverend Day wished to make a formal complaint against such mail being sent to him or his church (Tr. 117-123).

Reverend Day was arrested and charged with the crimes stated in the indictment on September 13, 1976. On October 20, 1976, the jury returned with a verdict of guilty to the crimes charged (Tr. 251).

Issue Presented for Review

Does the trial Judge's failure to grant a judgment of acquittal upon the defense's motion to dismiss at the close of the evidence, and where the Government has failed to prove guilt beyond a reasonable doubt, require a reversal of the conviction?

A R G U M E N T

THE GOVERNMENT FAILED TO PROVE THE
DEFENDANT GUILTY BEYOND A REASONABLE
DOUBT, AND THE DENIAL OF DEFENDANT'S
MOTION TO DISMISS WAS REVERSIBLE
ERROR AS A MATTER OF LAW.

At the close of the entire case, and before the summations of counsel, defense counsel moved to dismiss the charges against Reverend Day on the ground that the Government failed to offer evidence to prove the defendant guilty beyond a reasonable doubt. The trial judge denied the motion (Tr. 263).

There is no dispute that, generally, the determination of whether or not the prosecution has sustained its burden of proving a defendant's guilt is to be made by the jury. Nevertheless, the court, in a proper case, may enter a judgment of acquittal where the prosecution's evidence cannot sustain a conviction. Rule 29(a) of the Federal Rules of Criminal Procedure states, in pertinent part, that the trial court "on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses."

It has long been a fundamental assumption of American jurisprudence that proof of a criminal charge beyond a reasonable doubt is a constitutional requirement. In re Winship, 297 U.S. 358, 361-364 (1970); Speiser v. Randall, 357 U.S. 513, 525-526 (1958); Wilson v. United States, 232 U.S. 563, 569-570 (1914); Miles v. United States, 103 U.S. 304, 312 (1881). The reasonable doubt beyond which the prosecution's case must arrive is that doubt which would cause a reasonable person to hesitate to act in a matter of personal importance. United States v. Hart, 407 F.2d 1087, 1091 (2d Cir. 1969); United States v. Bilotti, 380 F.2d 649, 564 (2d Cir.), cert. denied, 389 U.S. 944 (1967); Holland v. United States, 348 U.S. 121, 140 (1954).

In the instant case, Count One of the Government's indictment charged that the appellant, Lamont B. Day, "did combine, conspire and agree [with Annie L. Presswood, Woodrow Presswood and Claudie Grayson, Jr.] together to commit an offense against the United States, to wit: to steal, embezzle, take, and abstract from the mail and authorized depositories for mail matter, letters and articles and things contained therein in violation of Title 18 U.S.C. § 1708." (App. 1). The Government sought to establish the appellant's guilt of this crime mainly by the

testimony of the appellant's alleged co-conspirators, Grayson and the Presswoods.

Grayson acknowledged that he agreed to enter into a stolen check scheme with the Presswoods (Tr. 20). Grayson was to steal the checks from mail circulation and turn them over to Woodrow Presswood, who, in turn, was to have them cashed by a "Preacher" (Tr. 20-23). However, under cross-examination by defense counsel, Grayson admitted that during the entire period of planning and carrying out this scheme, he never saw or met the appellant, Reverend Lamont B. Day.

ROSENTHAUL: Had you ever met Reverend Day before this day, or before your were arrested?

GRAYSON: Not before I was arrested, no.

ROSENTHAUL: So, all the time you were having conversations with the Presswoods, you had never met Reverend Day, is that correct?

GRAYSON: Never seen him.

ROSENTHAUL: You only knew what they [the Presswoods] told you about him, is that correct?

GRAYSON: True." (Tr. 33-34)

Count Eight of the Government's indictment charged that the appellant, in conjunction with Annie and Woodrow Presswood, "devised a scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses," by placing stolen checks in the mails, to

be deposited in the account of Reverend Day's Church in Youngstown, Ohio, in violation of 18 U.S.C. §§ 1341 and 2 (App. 3). Here, again, the Government sought to establish the appellant's guilt of this crime chiefly by the testimony of Annie and Woodrow Presswood.

Testimony at trial indicated that, in 1969, the Reverend Day confronted Woodrow with the discovery of an illicit affair occurring between the Reverend Day's wife and Woodrow Presswood (Tr. 158-159). The Reverend Day also had informed the police that Presswood was dealing illegally in heroin, for which Presswood suffered a subsequent conviction (Tr. 60-61, 160). Clearly Presswood had strong motive to implicate Reverend Day.

The years passed and, in 1976, first Annie Presswood, and then Woodrow Presswood, approached the Reverend Day for "counseling," in the appellant's capacity as a cleric (Tr. 40-41, 67, 160-161). On the witness stand, however, Woodrow Presswood weaved a tale of involving the Reverend Day in the stolen check scheme already concocted by himself and Claudie Grayson (Tr. 41-46, 55-60). Annie Presswood testified to her participation in the scheme with the appellant and Woodrow Presswood, saying she did so out of fear of her husband (Tr. 68-78). Supposedly Annie Presswood, at the instruction

of the appellant, forged and sent stolen checks through the mails for depositing in the Ohio account of appellant's church (Tr. 71-77).

By contrast, Reverend Day testified that he was never involved in any stolen check scheme (Tr. 157). He described the church's method of receiving donation, which consisted of having donors send money to the church's account at the Union National Bank in Youngstown, Ohio (Tr. 154-156). Several parishioners and donors also testified similarly as to the account and method of donating (Tr. 123-153). Reverend Day had no control over the account. The only person with access to the account was Reverend Mustafa (Tr. 155).

Reverend Day further testified that when he was informed by bank officials and Reverend Mustafa of problems with the account concerning bad checks being mailed in for deposit he immediately went to see a postal inspector about the matter (Tr. 202-204). This was corroborated by the postal inspector with whom the Reverend Day conferred (Tr. 117-123).

A full reading of the transcript of the trial makes clear that the Government's case did not eliminate that doubt which would cause a reasonable person to hesitate to act. The suspicion of revenge as a motive on the part of Woodrow Presswood against the appellant was never

overcome. Annie Presswood, who testified that she entered the scheme out of fear of her husband, presumably testified against Reverend Day because of that same fear.

There was never any connection made between Reverend Day and Claudie Grayson, who originated the scheme. Nor was it ever established that the Reverend Day had access to the bank account into which the stolen checks were deposited.

Clearly, in the case below, the Government did not shoulder its burden. Even viewing the evidence most favorably toward the Government, its case rests upon inferences to be garnered chiefly from the testimony of three convicted felons, one of whom did not know the defendant and two of whom testified under a substantial cloud of prior bias against the defendant. The Government's case was more than counterbalanced by the evidence presented by the defense.

Where a motion for judgment of acquittal for insufficiency of evidence has been made, the sufficiency of the evidence supporting the Government's case must be considered in conjunction with the evidence presented by the defense. United States v. Tramunti, 500 F.2d 1334 (2d Cir.), cert. denied, 419 U.S. 1079 (1974). It has been the

rule in this Circuit that, once this consideration is made, it is the duty of the trial judge to ascertain whether the Government has produced substantial evidence, when viewed in a light most favorable to the Government, to establish the defendant's guilt. United States v. Brooks, 349 F. Supp. 168 (S.D.N.Y. 1972); United States v. Feinberg, 140 F.2d 592 (2d Cir. 1944). See also United States v. Harris, 409 F.2d 77, 82 (4th Cir.), cert. denied sub nom Brown v. United States, 396 U.S. 965 (1969).

Viewing the evidence in the trial below, in light most favorable to the Government, it can be seen that the case against Reverend Day was based almost solely upon inference. The trial established only the most tenuous relationship between the appellant and the crime.

The substantial evidence necessary to withstand a motion for judgment of acquittal has been held to mean more than a synthesis of a chain of inferences from the critical facts. United States v. Wapnick, 202 F. Supp. 712, 716 (E.D.N.Y. 1962); United States v. Gardner, 171 F.2d 753 (7th Cir. 1948). Such evidence was not present here.

In the present case it was the trial court's duty to grant the appellant's motion for a dismissal of

the Government's case. "[A] society that values the good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt." In re Winship, 397 U.S. 358, 363-64 (1970).

C O N C L U S I O N

For all of the foregoing reasons, appellant asks that the judgment of conviction entered below be reversed.

Dated: New York, New York
May 6, 1977

Respectfully submitted,

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